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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LAWRENCE C. QUIGLEY et al.,

Plaintiffs and Respondents,

v.

CLARICE DOLLY TOLER,

Defendant and Appellant.

D054564

(Super. Ct. No. PN28574)

APPEAL from a judgment of the Superior Court of San Diego County, Richard G. Cline, Judge. Reversed.

Robert and Helene Quigley established a family trust providing that upon the surviving spouse's death, the trust assets would be distributed equally to their three adult children, Lawrence Quigley, Phillip Quigley and Clarice Dolly Toler (Dolly).¹ Several

¹ To avoid confusion, we shall refer to the Quigley children by their commonly used first names, and to their parents as Mother and Father. We shall refer collectively to Lawrence and Phillip as the Brothers.

years after both parents died, the Brothers, who were the successor cotrustees, obtained a judgment that Dolly violated the trust's no contest clause and forfeited her one-third interest in the trust based on her answer to the Brothers' unlawful detainer complaint.

Dolly appeals. We reverse. The language of the no contest clause does not reflect an intent to disinherit a beneficiary based on the filing of this defensive pleading under the particular circumstances of this case.

FACTUAL AND PROCEDURAL BACKGROUND

In 1992, Mother and Father created a trust (Family Trust), the principal asset of which was a residence in Encinitas (the Encinitas home). Under the trust provisions, the trust was irrevocable upon the death of the first spouse. Mother and Father designated the Brothers as successor cotrustees, and their three adult children as equal remainder beneficiaries. Specifically, the Family Trust stated that "[o]n the death of the surviving Trustor, the Trust shall terminate and the Trustee shall, as soon as reasonably possible, divide the net income and principal remaining in the Trust into three (3) equal shares and distribute them to the [three children]." Section 8.04 of the Trust gave the cotrustees

"absolute discretion" in determining the appropriate manner in which to equally divide the assets.²

The Family Trust also contained a no contest clause, which provided that a beneficiary "absolutely forfeit[s]" any benefits under the trust if the beneficiary "asserts any claim (except a legally enforceable debt), statutory election, or other right or interest against or in Trustor's estate . . . , other than pursuant to the express terms [of the Trust]. . . , or directly or indirectly contests, disputes, or calls into question, before any court, the validity of any provisions of this instrument" ³

² Section 8.04 states: "On any division of the assets of the Trust Estate into shares or partial shares and on any final or partial distribution of the assets of the Trust estate or any trust provided for in this Declaration, the Trustee, in its absolutely discretion, may divide and distribute such assets in kind, may divide or distribute undivided interests of such assets, or may sell all or any part of such assets and make division or distribution in cash or partly in cash and partly in kind. The decision of the Trustee, either prior to or on any division or distribution of such assets, as to what constitutes a proper division of such assets of the Trust Estate or other trust provided for in this Declaration shall be binding on all persons in any manner interested in any trust provided for in this Declaration."

³ The no contest clause states: "The beneficial provisions of this instrument . . . are intended to be in lieu of any other rights, claims, or interest of whatsoever nature, whether statutory or otherwise, except bona fide pre-death debts, which any beneficiary hereunder may have against or in Trustor's estate or the properties in trust hereunder. Accordingly, if any beneficiary hereunder asserts any claim (except a legally enforceable debt), statutory election, or other right or interest against or in Trustor's estate, Trustor's Will, or any properties of this Trust, other than pursuant to the express terms hereof or of said Will, or directly or indirectly contests, disputes, or calls into question, before any court, the validity of any provisions of this instrument or of said Will, then: [¶] a) Such beneficiary shall thereby absolutely forfeit any and all beneficiary interests of whatsoever kind and nature which such beneficiary might otherwise have under this instrument and the interests of the other beneficiaries shall be proportionately increased and/or advanced; [¶] b) All of the provisions of this instrument, to the extent that they confer any benefits, powers, or right whatsoever upon such claiming, electing, or contesting beneficiary, shall thereupon become absolutely void and revoked; and [¶] c) Such claiming, electing, or

Father died in 1999. In December 2000, the Brothers and Dolly agreed that Dolly would move into the Encinitas home and serve as the primary caretaker for Mother, who was in declining health. For the next five years, Dolly cared for Mother until her death in April 2005.

Shortly after Mother's death, Dolly told the Brothers she would like to purchase the home and to continue living there. Although initially receptive to this idea, the Brothers soon stated a preference for selling the house to a third party and then dividing the assets of the sale. They told Dolly to immediately move out of the property and to contact them only through their attorney.

About six weeks after Mother's death, Dolly's counsel (Susan Stricklin Wilson) and the Brothers' counsel (Boris Siegel) had a lengthy discussion about Dolly's desire to purchase the home and discussed terms of a potential sale. Several days later, a second law firm retained by the Brothers (Kimball, Tirey & St. John) served Dolly with a 60-day notice to terminate her tenancy in the home. In response, Wilson wrote to Siegel stating that "given the positive tenor of our telephone discussion last week, I was surprised" to learn about the notice.

contesting beneficiary, if then acting as a Trustee hereunder, shall automatically cease to be a Trustee and shall thereafter be ineligible either to select, remove or become a Trustee hereunder. [¶] The foregoing shall not be construed, however, to limit the appearance of any beneficiary as a witness in any proceeding involving this instrument or said Will nor to limit any beneficiary's appearance in any capacity in any proceeding solely for the construction of either of said documents."

In a responsive letter, Siegel said he had been unaware the notice was going to be served, but stated that the Brothers intended to institute unlawful detainer proceedings if the siblings did not reach a prompt sales agreement and the Brothers did not intend to abate the eviction process during the negotiations. Siegel also said he agreed with Dolly's attorney "that the probate court is the court of proper jurisdiction" for an unlawful detainer action, and that he "would be willing to enter into a stipulation with you to have any unlawful detainer proceeding heard [in the probate court]" Siegel also said that time was of the essence with respect to the sale, and the Brothers did not want to list the house for sale until Dolly moved out of the home.

The next day, on June 17, 2005, Dolly's attorney sent Siegel an offer to purchase the house. During the next several weeks, the parties (through their counsel) engaged in written negotiations over the price and terms of the purchase offer. In mid-July, Siegel suggested the parties engage in a mediation before retired Superior Court Judge David Moon as "part of a global settlement of all claims between the parties," including the disposition of the Encinitas property. Dolly's counsel agreed that Judge Moon would be an "excellent mediator" to "expedite resolution of this matter."

For reasons not apparent in the record, the communication between the parties stopped at this point, and on August 15, 2005, the Brothers filed an unlawful detainer complaint against Dolly in superior court. The complaint was a form pleading filed by the Brothers' second law firm (Kimball, Tirey & St. John), and provided no indication of the nature of the dispute between the Brothers and Dolly, or the reason that Dolly was

living in the home at the time. Under applicable statutes, a party must file a response to an unlawful detainer complaint within five days. (Code Civ. Proc., §§ 1167, 1167.3.)

Four days later, on August 19, Dolly filed a safe harbor petition in the probate court requesting a ruling on whether a proposed petition seeking to partition the property and compel the Brothers to sell her the Encinitas home constituted a "contest" under the Family Trust. (Prob. Code, § 21320.) In the proposed petition, Dolly sought an order "[a]uthorizing and directing her brothers . . . to sell her [the Encinitas home] at fair market value. . . ." Specifically, Dolly alleged that the Brothers "want to evict her from her home and sell it out from under her out of spite, and in direct and flagrant breach of their fiduciary duty as co-trustees to treat all trust beneficiaries fairly and impartially. [Dolly] seeks a purchase at fair market value an asset of which she is, as a practical matter, an owner of an undivided one-third interest, subject to the administration of the . . . Family Trust."⁴

On that same date, Dolly filed an answer (Answer) to the Brothers' unlawful detainer complaint in the civil court. In the Answer, Dolly asked the court for an order denying the unlawful detainer action *"and finding that probate court, in San Diego Superior Court Case No. PN 28574, is the proper forum for this dispute between the three heirs of the Quigley Family Trust as to the disposition of trust real property."*

⁴ In addition to this safe harbor petition on the proposed partition action, Dolly previously brought two other safe harbor petitions seeking a determination whether a creditor's claim against the Family Trust would constitute a contest. Because the nature of these petitions is not relevant to the issues here, we will not detail the facts underlying the petitions or the court's rulings on the petitions.

(Italics added.) Dolly then set forth the background of the dispute, and used some of the same language in her proposed petition for partition, including that she is seeking "a purchase at fair market value an asset of which she is, as a practical matter, an owner of an undivided one-third interest, subject to the administration of the Quigley Family Trust." Dolly also alleged that the Brothers were acting "out of spite" in seeking to evict her from the property and refusing to sell her the property, and therefore they violated their fiduciary duties to her as a beneficiary. Dolly concluded by stating that she intends to seek a stay of the unlawful detainer proceedings in the probate court.

On September 12, Dolly filed an application in the probate court to stay the unlawful detainer proceedings pending the hearing on the safe harbor petition in the probate court. Dolly asserted that "the outcome of the declaratory relief petitions and the outcome of the underlying petitions will determine the right to the possession of the . . . real property that is the subject of the unlawful detainer proceedings." In a supporting declaration, Dolly's counsel stated: "Since this court had jurisdiction over the Trust when [the Brothers] filed the unlawful detainer proceedings, and because the unlawful detainer proceedings involve the internal affairs of the Trust, this Court has exclusive jurisdiction over Trust matters and should stay the unlawful detainer proceedings."

Four days later, Dolly's counsel wrote to Siegel again confirming Dolly's interest in purchasing the Encinitas home, and stated that Dolly would agree to stipulate to the entry of judgment in the unlawful detainer proceeding and to vacate the property no later than January 1, 2006, allowing time for the parties to agree on the terms of a sales agreement. The Brothers' counsel responded that the Brothers were not interested in

selling the property to Dolly because of her "self serving and dishonest behavior in the past," but they would be willing to entertain an offer if it complies with the terms set forth in counsel's previous letter. The Brothers also opposed a stay of the unlawful detainer action.

On October 5, the Brothers filed an opposition to Dolly's safe harbor petition on the proposed partition action, arguing that the proposed action was a contest because it was an attempt to "circumvent both the authority and discretion of the co-trustees to administer the Trust pursuant to its terms. . . ."

Two days later, the court issued a tentative ruling finding Dolly's proposed partition action would constitute a "contest" under the Family Trust's no contest clause. The court stated it agreed with the Brothers that Section 8.04 of the Trust gave the trustees "total discretion" with respect to distribution of assets, and Dolly was seeking to "bypass or eliminate that discretion *by substituting it with a court order.*" (Italics added.) The court also denied Dolly's application to stay the unlawful detainer proceeding.

Less than two weeks later, on November 3, the parties entered into a Stipulation for Judgment in the unlawful detainer proceeding, in which the parties agreed judgment would be entered in the Brothers' favor. In the stipulated judgment, the parties agreed: (1) Dolly would return possession of the premises to the Brothers; (2) the parties would attend a mediation on November 7 with retired Judge Moon in an "attempt to reach an agreement by which [Dolly] may purchase" the Encinitas home from the Family Trust; (3) the parties' failure to reach an agreement in the mediation would not be a basis for

Dolly to set aside the stipulated judgment; and (4) any issues of back rent would be decided by the probate court.

Four days later, the parties attended the mediation with Judge Moon, after which Dolly was to provide the Brothers with certain documentation of her financial ability to purchase the home. Two weeks later, on November 21, the probate court entered a final order finding that Dolly's proposed partition action would constitute a contest under the Family Trust's no contest clause.

During the next month, the parties continued to discuss Dolly's possible purchase of the home. Although another mediation was scheduled, the Brothers declined to attend, and thereafter refused to sell the home to Dolly. On or about December 31, 2005, eight months after her mother died, Dolly moved out of the property.

More than two years later, in February 2008, the Brothers petitioned for instructions seeking to enforce the no contest clause in the Family Trust based solely on Dolly's Answer in the unlawful detainer action.⁵ The Brothers acknowledged that Dolly's safe harbor petition protected her actions in the probate court, but argued that by filing the defensive pleading in the unlawful detainer proceedings, Dolly sought to interfere with the Brothers' discretion pertaining to the Encinitas home. Specifically, the Brothers argued that "[b]y alleging in her answer that [she] was an owner of 'an undivided one-third interest' in the Property," Dolly made a claim that was contrary to the

⁵ Before seeking this relief, the Brothers filed a safe harbor petition to determine whether filing a petition for instructions would itself constitute a contest. The probate court concluded it would not, and this court affirmed that ruling. (*Toler v. Quigley* (Dec. 4, 2007, D049382) [nonpub. opn.])

Family Trust's express terms, under which the "Trustees were . . . the only owners of the Property."

The probate court held an evidentiary hearing on the Brothers' petition. At the hearing, the Brothers did not call any witnesses, and instead relied primarily on the terms of the Family Trust and Dolly's Answer in the unlawful detainer action to argue that Dolly forfeited her one-third interest in the trust assets. In opposition, Dolly presented the evidence summarized above, including the correspondence between counsel during the negotiations over Dolly's desire to purchase the property. Dolly also presented her counsel's testimony that the purpose of filing the Answer was to inform the court that the probate court was the proper forum for the dispute and to preserve the status quo while Dolly obtained a determination on her safe harbor petition with respect to the partition claim. Counsel explained that because of the five-day deadline to file an answer in an unlawful detainer proceeding, she believed it necessary to file a responsive pleading to preserve Dolly's rights while the probate court was addressing the safe harbor petition and other issues pertaining to the ownership of the home. Dolly alternatively argued the Brothers could not enforce the no contest clause because they acted in bad faith and contrary to Mother's intent, who had expressed her strong desire that Dolly remain living in the property.

After the hearing, the probate court ruled that Dolly's Answer constituted a contest of the Family Trust. The court stated that the Answer "assert[ed] ownership of, and rights to, the Subject Property" and "ask[ed] the [civil] court to recognize [her] rights and to act accordingly." The court found that these claims were "inconsistent with the plain

language of the [Family] Trust, which indicates that the Trustees are the owners of the . . . property," and were "directly contrary to the desires and efforts of the Trustees to exercise their discretion with regard to the disposition of trust property." The court thus found that Dolly's Answer was a contest because it "sought to bypass or eliminate the trustees' discretion by substituting it with a court order."

The probate court also rejected Dolly's alternative contention that the Brothers acted in bad faith and with an improper motive in administering the trust and in engaging in negotiations with her. The court found the evidence did not support these claims, and the Brothers were not legally required to consider Dolly's "claim of a special relationship" to the Encinitas home in distributing the trust assets. The court also agreed with the Brothers' argument that Mother's expressed intent about the disposition of the house was not relevant because the trust became irrevocable at Father's death.

The court thus entered a judgment finding that Dolly forfeited her one-third interest in the assets of the Family Trust. Dolly appeals.

DISCUSSION

I. Governing Legal Principles

A no contest clause "'essentially acts as a disinheritance device, i.e., if a beneficiary contests or seeks to impair or invalidate the trust instrument or its provisions, the beneficiary will be disinherited and thus may not take the gift or devise provided under the instrument.' [Citation.] 'The purpose of no contest clauses "is to discourage will contests by imposing a penalty of forfeiture against beneficiaries who challenge the will.'" (Betts v. City National Bank (2007) 156 Cal.App.4th 222, 231 (Betts).) The

primary factor determining whether a particular action constitutes a "contest" is the intent of the drafter as expressed in the instrument. (*Id.* at p. 232; *Crook v. Contreras* (2002) 95 Cal.App.4th 1194, 1206.)

Two conflicting policies underlie the interpretation of no contest clauses. On the one hand, no contest clauses are favored because they discourage litigation and give effect to the testator's intent. (*Betts, supra*, 156 Cal.App.4th at p. 232.) On the other hand, no contest clauses are disfavored by the policy against forfeitures. (*Ibid.*) In balancing these concerns, the Legislature gave greater weight to the policy against forfeitures, mandating that courts apply a rule of strict construction in interpreting a no contest clause. (Prob. Code, § 21304.)⁶ As the California Supreme Court has stated, "[b]ecause a no contest clause results in a forfeiture . . . , a court is required to strictly construe it and may not extend it beyond what was plainly the testator's intent." (*Burch v. George* (1994) 7 Cal.4th 246, 254.)

In applying the rule of strict construction, the determination whether a particular action constitutes a contest within the meaning of the no contest clause depends on the specific facts and circumstances of each case. (See *Betts, supra*, 156 Cal.App.4th at

⁶ Effective January 1, 2010, the Legislature repealed Probate Code section 21304, and enacted a major revision of the statutory scheme governing no contest clauses. The new statute limits the enforceability of no contest clauses to only three types of claims: (1) direct contests brought without probable cause; (2) challenges to the transferor's ownership of property at the time of the transfer if expressly included in the no contest clause; and (3) creditor's claims and actions based on them, if expressly included in the no contest clause. (Stats. 2008, ch. 174, § 2, p. 483; see *Johnson v. Greenelsh* (2009) 47 Cal.4th 598, 601, fn. 2.) This new law does not apply to the order before us. (See Prob. Code, § 3, subd. (e).) All statutory references are to the statutes in effect at the time of the no contest hearing in October 2008.

p. 233; *McKenzie v. Vanderpoel* (2007) 151 Cal.App.4th 1450; *Estate of Davies* (2005) 127 Cal.App.4th 1164, 1173.) " '[T]he answer cannot be sought in a vacuum, but must be gleaned from a consideration of all the circumstances, and the purposes that the [testator] sought to attain by the provisions of [his] will.' [Citation.]." (*Burch v. George, supra*, 7 Cal.4th at p. 255.) " 'Each case depends upon its own peculiar facts and thus case precedents have little value when interpreting a [no contest clause].' " (*Betts, supra*, at p. 233.)

Where, as here, the trial court's determination did not depend on a resolution of disputed facts, we review the court's ruling de novo.⁷ (*Balian v. Balian* (2009) 179 Cal.App.4th 1505, 1511; *Bradley v. Gilbert* (2009) 172 Cal.App.4th 1058, 1068.)

II. Analysis

The Family Trust defines a "contest" to include a claim that "directly or indirectly contests, disputes, or calls into question, before any court, the validity of any provisions of this instrument or of said [Trust]. . . ." In concluding that Dolly's Answer fell within this definition, the court relied on particular language in which Dolly appeared to claim an ownership interest in the property, and a right to compel the Brothers to sell her the property. However, the probate court did not examine this language within the context of the entire pleading and the parallel probate proceedings. As explained below, the court's ruling was erroneous because it was based on too narrow a reading of the pleading and

⁷ Although the court made factual determinations on issues related to Dolly's claims the Brothers acted in bad faith and with improper motives, we do not reach these claims because we agree with Dolly's initial contention that her Answer did not constitute a "contest" within the meaning of the Family Trust.

was inconsistent with the rule that a court must strictly interpret a no contest clause to encompass only those actions the testator would have plainly intended to reach. (See *Perrin v. Lee* (2008) 164 Cal.App.4th 1239, 1248-1249.)

In her Answer, Dolly discussed her relationship to the Encinitas property and the scope of the Brother's discretionary authority to distribute the trust assets, but she did not request the court to rule in a particular way on those issues. Instead, she specifically asked that the court not rule on the issues and that the court allow those claims to be heard in the probate court, pending the outcome of her safe harbor petition on the proposed partition action. In the very first paragraph of the Answer, Dolly made clear that she was asking the court to deny the unlawful detainer complaint "*and find[] that [the] probate court . . . is the proper forum for this dispute*" (Italics added.) The next several paragraphs describe the nature of the dispute and Dolly's relationship to the property. These facts were necessary because the Brothers had not provided any background information in their form complaint. In the final substantive paragraph of the Answer, Dolly stated that she had filed a petition for declaratory relief in probate court pertaining to the property, and that she "intends to seek an order of the probate court staying these unlawful detainer proceedings until such time as the probate court has entered its ruling on the pending petitions for declaratory relief and for partition of the subject real property by sale." Dolly stated that she believed the probate court would issue a stay "[a]s there are already actions pending in the probate court addressing the issue of" her entitlement to occupy the Encinitas home.

Viewing the entire pleading, Dolly was not asking the unlawful detainer court to rule that she had an ownership or possessory interest in the house or that the Brothers' discretion was limited. Instead, Dolly asked that the unlawful detainer court defer such findings to the probate court where such matters were pending. Because Dolly's ability to remain in legal possession of the property was dependent on the *probate court's* ruling on the safe harbor petition and that ruling was pending in the probate court, Dolly filed the Answer seeking to maintain the status quo until she obtained the ruling. Dolly was essentially seeking a continuance to allow the issues to work their way through the probate court. It is well settled a request for a continuance does not itself trigger a no contest clause. (Prob. Code, § 1043, subd. (c).)

Dolly thereafter took no steps in the unlawful detainer action to assert that she had a right to purchase the property or had an ownership or possessory interest in the property. Instead, Dolly's subsequent actions were fully consistent with the limited purpose of her Answer. First, she requested the probate court to stay the unlawful detainer action pending the probate court's determination of her safe harbor petition. Second, shortly after the court issued a tentative ruling that her partition petition would constitute a contest, Dolly entered into a stipulated judgment agreeing to vacate the property, and she did in fact leave the property by December 31. These actions support that Dolly was not seeking to challenge the Brother's discretionary authority in the unlawful detainer proceedings, and instead was seeking to continue the matter to allow the court to rule on the safe harbor petition. Although Dolly did not expressly include within her safe harbor petition the issue whether her Answer in the unlawful detainer

proceedings would constitute a contest, under the circumstances Dolly's petition for declaratory relief can be fairly read to encompass such pleading. As soon as Dolly learned of the court's ruling that her partition petition would constitute a contest, she stipulated to judgment in the unlawful detainer action.⁸

Moreover, the fact that Dolly filed the Answer without specifically requesting a "continuance" in the unlawful detainer court, does not undermine our conclusion that the Answer did not constitute a contest. In determining whether a particular action falls within the scope of a no contest clause, our focus must be on the substance of the action, rather than the form. (*Giammarrusco v. Simon* (2009) 171 Cal.App.4th 1586, 1608.) As a practical matter, it was reasonable for Dolly's counsel to seek a stay of the unlawful detainer proceeding in the probate court, rather than the civil court, particularly because the Brothers' counsel had previously agreed that this would be the proper forum to litigate any eviction issues.

The Brothers argue that the Answer constituted a "contest" because Dolly specifically alleged that she is a part owner of the Encinitas home, an allegation that is inconsistent with the Family Trust terms appointing the Brothers as the successor cotrustees (and thus the legal owners of the property). Specifically, in the introductory paragraph of the Answer, Dolly stated that she was "in fact an owner of an undivided one-third interest in the subject property, subject to the administration of the trust, as are

⁸ Further as a practical matter, there was no time to obtain a ruling on a safe harbor petition with respect to the Answer, because the Answer needed to be filed within five days, or the Brothers would have a right to a default.

the two plaintiffs, who are the defendant's brothers and the named trustees of the [Family] Trust." However, viewed in context of the entire paragraph, Dolly's statement as to a one-third ownership interest was not a "claim" of a current ownership right; instead it was an explanation of the allegations being asserted in the probate court, and the fact that these ownership issues were subject to trust administration and were before the probate court. As we have noted, Dolly was not asking the court to recognize any such ownership right, and instead was seeking a ruling that these issues be addressed in the probate court. In determining whether an action constitutes a contest "the *effect of the . . . action*" is controlling. (*Giammarrusco v. Simon, supra*, 171 Cal.App.4th at p. 1608.)

The Brothers' reliance on Paragraph 9 of the Answer is similarly misplaced. In Paragraph 9, Dolly alleged that the Brothers were acting in breach of their fiduciary duties because the Brothers were acting out of spite in refusing to permit her to "purchase at fair market value an asset of which she is, as a practical matter, an owner of an undivided one-third interest, subject to the administration of the . . . Family Trust." This assertion was made in the context of her allegation that the Brothers had breached their fiduciary duties, a claim that as a matter of public policy cannot constitute a contest. (*Bradley v. Gilbert, supra*, 172 Cal.App.4th at pp. 1069-1071.)

We are also unpersuaded by the Brothers' reliance on the probate court's denial of Dolly's safe harbor petition to support the court's subsequent ruling that the Answer constituted a contest. The Brothers argue that Dolly's use of similar language in her proposed partition petition and in the Answer filed in the unlawful detainer proceedings

means the result should be the same—both actions constitute a contest under the Family Trust's no contest clause. In asserting this argument, the Brothers ignore that the pleadings were filed for different purposes and each sought a different result. In the safe harbor proceedings, Dolly attached her proposed petition which specifically sought an order compelling the Brothers to sell the property to her based on claimed rights in the property. The court ruled that these allegations sought to *substitute* a court order for the Trustees' absolute discretion, and thus would constitute a contest. But in the Answer, Dolly sought to preclude the unlawful detainer court from making any rulings on any potential possessory rights until the probate court had ruled on the safe harbor petition. Given the different circumstances under which the pleadings were filed, the court's earlier ruling on the safe harbor petition did not support a similar ruling on the issue of whether the Answer constituted a contest.

In reaching our conclusions, we recognize that Dolly's counsel could have drafted the Answer with more precision to make absolutely clear that Dolly was not seeking a ruling on the merits of the Brothers' claims. However, we are required to examine the challenged conduct in a practical manner in view of all the circumstances and construe the trust narrowly so as not to cause a forfeiture unless such forfeiture was clearly intended. (See *Perrin v. Lee*, *supra*, 164 Cal.App.4th at p. 1249; *Betts*, *supra*, 156 Cal.App.4th at pp. 232-233.) As this court has stated, " '[o]nly where an act comes strictly within the express terms of the forfeiture clause may a breach thereof be declared.' " (*Graham v. Lenzi* (1995) 37 Cal.App.4th 248, 255.)

The key consideration in determining whether a beneficiary has violated a no contest provision is the drafter's intent as expressed in the controlling instrument. (*Betts, supra*, 156 Cal.App.4th at p. 232.) In this case, Dolly's acts do not come within the express terms of the forfeiture clause. The Trust instrument reflects the intent of Mother and Father that each of their three children would share equally in the trust assets. They also appointed the two eldest siblings to serve as trustees, and included a no contest clause. There is nothing in the language of the clause that would fairly suggest that merely by filing an answer in the unlawful detainer proceedings in which Dolly sought to maintain the status quo until the probate court could rule on the issues and until the parties could resolve their negotiations, the parents would have intended their daughter to forever lose entitlement to any inheritance. The Brothers' proposed interpretation is simply not a fair or reasonable way of reading the trust, and the court's order was not consistent with the parents' intent as it was expressed in the trust instrument.

DISPOSITION

Judgment reversed. The court shall vacate its judgment ruling that Clarice Dolly Toller has forfeited her interest in the Quigley Family Trust, and enter a judgment denying Brothers' petition for instructions to enforce the no contest clause. Respondents to bear appellant's costs on appeal.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.